IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ANTHONY TERRELL THOMPSON, Petitioner.	)	2 CA-CR 2007-0106-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20043616

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery
Tucson
Attorneys for Petitioner

P E L A N D E R, Chief Judge.

¶1 Petitioner Anthony Terrell Thompson was charged in a seven-count indictment with six counts of sexual conduct with a thirteen-year-old minor, Stephanie C., and one count of sexual conduct with a twelve-year-old minor, all dangerous crimes against children. The state alleged Thompson had one prior felony conviction and committed these offenses

while on probation. Pursuant to a plea agreement, Thompson pled guilty to one count of sexual conduct with Stephanie C. The trial court sentenced him in April 2006 to a presumptive term of twenty years in prison.

¶2 Thompson then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., seeking to have his conviction vacated. He claimed his guilty plea was involuntary because the state had failed to disclose impeachment material pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963). Had Thompson known the information, he claimed, he would not have accepted the plea agreement offered by the state. Additionally, Thompson alleged trial counsel had rendered ineffective assistance by failing to request or obtain the impeaching information, which Thompson characterized as "critical to his decision to enter the plea agreement."

¶3 In a detailed minute entry, the trial court analyzed Thompson's claims at length before dismissing his petition without a hearing. The court ruled Thompson had failed to show that the state had violated its duty of disclosure under *Brady*, that there was any basis for permitting Thompson to withdraw his guilty plea, or that trial counsel had rendered ineffective assistance. This petition for review followed. We will not disturb the trial court's ruling unless we find it manifestly abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶4 The information Thompson claims the state should have disclosed to him before he agreed to plead guilty to one count of the indictment in January 2006 was that

victim Stephanie C. had been adjudicated delinquent for shoplifting in January 2004, more than a year after the charged offenses had occurred in December 2002. Thompson argues that, because shoplifting is a crime involving dishonesty, Stephanie's delinquency adjudication was impeachment material the state was obligated to disclose under *Brady* and Rule 15.1(d), Ariz. R. Crim. P., 16A A.R.S., but had not done so.

¶5 Citing the Supreme Court's holding in *United States v. Ruiz*, 536 U.S. 622, 633, 122 S. Ct. 2450, 2457 (2002), however, the trial court ruled that, although the state must disclose impeachment material prior to trial, "the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." Quoting Rule 15.1(b)(8), 16A A.R.S., the trial court further ruled that, before pleading guilty, Thompson "did have a right to 'all then existing material or information which tends to mitigate or negate [his] guilt as to the offense charged, or which would tend to reduce [his] punishment.'" But, the court ruled, "under *Brady* and *Ruiz* he did not have a right to all information related to the potential impeachment of victims or witnesses." We agree with these rulings and are not persuaded by Thompson's efforts to limit or distinguish *Ruiz*. *See State v. Harris*, 680 N.W.2d 737, ¶¶ 17, 20 (Wis. 2004). And, in light of *Ruiz*, even assuming the impeachment material here might otherwise fall within Rule 15.1(b)(8), Thompson has not established that any alleged violation of that rule somehow invalidates his plea. Nor does Rule 15.1(d)(1), which only requires disclosure of "prior felony convictions," apply here.

¶6 By pleading guilty, Thompson waived all non-jurisdictional defenses and defects. *State v. Hamilton*, 142 Ariz. 91, 94, 688 P.2d 983, 986 (1984) (voluntariness of confession waived); *State v. Carter*, 151 Ariz. 532, 533, 729 P.2d 336, 337 (App. 1986) (speedy trial issue waived); *State v. Webb*, 140 Ariz. 321, 323, 681 P.2d 473, 475 (App. 1984) (claim of vindictive prosecution waived); *Dominguez v. Meehan*, 140 Ariz. 329, 332, 681 P.2d 912, 915 (App. 1983), *aff'd*, 140 Ariz. 328, 681 P.2d 911 (1984) (double jeopardy violation waived). Rejecting Thompson's assertion that he would not have pled guilty had he known of Stephanie's shoplifting adjudication, the trial court ruled the information "had no bearing upon the voluntariness of the plea."

¶7 We agree with the trial court's conclusion that the nondisclosure of Stephanie's delinquency adjudication did not render Thompson's plea involuntary. *See Ruiz*, 536 U.S. at 629, 122 S. Ct. at 2455. And we concur in its observation that "it is unclear whether the undisclosed impeachment information would have been material had Petitioner chosen to go to trial." Thompson was charged with violating A.R.S. §§ 13-1405 and 13-604.01 by having engaged in sexual activity with thirteen-year-old Stephanie and another, twelve-year-old girl. Under the indictment, Thompson faced enhanced, consecutive, day-for-day sentences totaling, by defense counsel's estimate, 211 years. In a motion he filed in September 2005 to sever the six counts of the indictment pertaining to Stephanie from the single count pertaining to the younger victim, Thompson admitted having

had sexual contact with Stephanie but claimed she had consented and had told him she was eighteen.

¶8 Because Thompson did not deny his sexual conduct with Stephanie, because she had indisputably been only thirteen years old at the time, and because her age rendered her legally incapable of consenting to the acts that gave rise to the charges, *see* A.R.S. § 13-1407(B),[1] Thompson had virtually no defense and nothing to gain by attempting to impugn his victim's credibility with a delinquency adjudication for a shoplifting offense with which she had been charged ten months after her encounter with Thompson.

---

[1]All seven counts of the indictment charged Thompson with sexual conduct with a minor in violation of A.R.S. § 13-1405(A), which provides: "A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age."

Section 13-1407, A.R.S., is entitled "Defenses." Subsection (B) of that statute provides:

> It is a defense to a prosecution pursuant to § . . . 13-1405 in which the victim's lack of consent is based on incapacity to consent because the victim was fifteen, sixteen or seventeen years of age if at the time the defendant engaged in the conduct constituting the offense the defendant did not know and could not reasonably have known the age of the victim.

But the statute provides no similar defense when the victim was younger than fifteen. *See also State v. Getz*, 189 Ariz. 561, 564 n.2, 944 P.2d 503, 506 n.2 (1997) ("[F]or some sexual crimes involving children, consent or lack thereof is immaterial. *See, e.g.*, A.R.S. § 13-1405(A) (sexual conduct with a minor).").

¶9 In any event, we find no abuse of the trial court's discretion in concluding, based on *Ruiz*, that the state had no obligation to disclose Stephanie's delinquency adjudication to Thompson before he pled guilty. It follows that Thompson's plea was not rendered involuntary by the lack of information he was not required to have or know when he decided to enter his plea. And we likewise find no abuse of discretion in the trial court's conclusion that Thompson had demonstrated no "manifest injustice" warranting the withdrawal of his guilty plea pursuant to Rule 17.5, Ariz. R. Crim. P., 16A A.R.S.

¶10 Finally, the trial court rejected Thompson's claim that trial counsel had been ineffective in failing to request or obtain information about Stephanie's 2004 delinquency adjudication. Again, by pleading guilty Thompson waived all non-jurisdictional defects including ineffective assistance of counsel, except for ineffectiveness directly related to the entry of his guilty plea. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). This is not a case, however, in which defense counsel gave Thompson incorrect or incomplete legal advice that induced a guilty plea Thompson would not otherwise have entered. *See State v. Anderson*, 147 Ariz. 346, 352, 710 P.2d 456, 462 (1985) (defendant pled guilty in reliance on mistaken advice that he could later withdraw plea); *State v. Smith*, 136 Ariz. 273, 279, 665 P.2d 995, 1001 (1983) (mistaken legal advice resulted in failure to present mitigating evidence). Here, the trial court found:

> In this case, . . . the State had no obligation to provide defense counsel with information about the victim's juvenile record prior to a plea. Nor would such information have materially impacted the voluntariness or the integrity of the

> plea. Therefore, that counsel did not independently obtain this information prior to a plea does not indicate deficient performance. Therefore, Petitioner has failed to prove that his counsel was inadequate, or that he suffered prejudice.

The record supports the trial court's conclusion that Thompson failed to state a colorable claim for ineffective assistance of counsel, and we cannot say the trial court abused its discretion in dismissing the claim without an evidentiary hearing.

¶11 Although we grant the petition for review, we deny relief.

_____

JOHN PELANDER, Chief Judge

CONCURRING:

_____

JOSEPH W. HOWARD, Presiding Judge

_____

J. WILLIAM BRAMMER, JR., Judge